

Notice of Allowability

Application No.

09/644,380

Examiner

Jennifer Kim

Applicant(s)

CHILTON, FLOYD H.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/11/2006.
2. ☒ The allowed claim(s) is/are 52-55.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 5/11/2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Alice Bonnen on July 24, 2006.

The application has been amended as follows:

Claim 52 has been amended to read in favor of:

---A liquid dietary supplement consisting essentially of: 19.29 weight percent water;
25 weight percent sucrose;
35 weight percent oils;
15 weight percent flavoring;
5 weight percent glycerin; and
less than 1 weight percent
minor ingredients selected from antioxidants, preservatives, colorants, stabilizers,
emulsifiers or a combination thereof; wherein the oils are (i) concentrated borage oil
and (ii) concentrated marine oil that contains eicosapentaenic acid.----- .

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims are allowable over the cited prior art because the prior art does not teach, disclose nor make obvious the claimed liquid dietary supplement consisting essentially of liquid dietary supplement consisting essentially of

19.29 w% water,

25 w% of sucrose;

35 w% oils;

15 w% flavoring;

5w% glycerin and

less than 1 w% minor ingredients selected from antioxidants,

preservatives, colorants, stabilizers, emulsifiers or a combination thereof;

wherein the **oils are concentrated borage oil and concentrated marine oil** that contains eicosapentaenic acid.

The prior art of record, (DeMichele et al. (U.S. Patent No. 5,223,285) teaches a liquid nutritional product (e.g. column 9, table 2) for enteral feeding comprising Fish oil (well known to contain eicosapentaenic acid EPA) in 20% wt and borage oil in 20% by weight. The rejection was made based on this table showing borage oil and fish oil make up 40% by weight encompassing the limitation of claim 52 drawn to 35 w% oils of borage oil and marine oil. However, this table shows that borage oil and fish oil make up 40% by weight of the lipid blend alone not 40% by weight of the total

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nutritional composition taught by primary reference. The actual content of fish and borage oil together account for less than 4% by weight of the total composition of the primary reference. Therefore, there is no motivation, suggestion or teaching from the prior art to employ specified combination with specified amounts of the active agents to arrive at the composition and clearly, simple optimization the amounts to be utilized using routine experimentation would not allow one of skill in the art to arrive at the composition of claim 52 in instant application.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sreenivasan Padmanabhan
Supervisory Examiner
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Jmk
July 20, 2006